

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RUBEN VICTOR CENTENO-BERNUY,
et al.,

Plaintiffs,

v.

ORDER
01-CV-839A

BECKER FARMS, et al.,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1), on January 24, 2002. On April 29, 2005, the parties filed cross-motions for summary judgment. On August 1, 2007, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that: (1) plaintiffs' motion for summary judgment be granted with regard to the defendants' affirmative defense and counterclaim for breach of contract; and (2) defendants' motion for summary judgment be granted with regard to plaintiffs' claim under the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") and plaintiffs' claim for overtime under the New York Labor Law, but denied with regard to plaintiffs' remaining claims.

Plaintiffs filed objections to the Report and Recommendation on August 14, 2007. Oral argument on the objections was held on May 22, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from counsel, the Court adopts the proposed findings of the Report and Recommendation, with one exception. With regard to plaintiffs' claim for overtime under the New York Labor Law, instead of adopting the Magistrate Judge's recommendation that such claim be dismissed, the Court hereby declines to exercise supplemental jurisdiction over such claim as it raises a novel issue of state law. See 28 U.S.C. § 1367(c)(1). The parties have not cited nor has the Court found any case, federal or state, directly addressing the issue of whether a farm worker who performs both farm work and non-farm work is entitled to overtime under the New York Labor Law. The Court finds that this issue is better addressed by the state courts in the first instance.¹

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation and herein, the Court: (1) grants plaintiffs' motion for summary judgment on defendants' affirmative defense and counterclaim for breach of contract; (2) grants defendants' motion for summary judgment on

¹ The Court notes that under New York law, plaintiffs have up to six months from the date of this Order to file their New York Labor Law claim in state court. See N.Y.C.P.L.R. § 205(a); see also 28 U.S.C. § 1367(d) (30-day tolling period unless state law provides for longer tolling period).

plaintiffs' AWWPA claim; (3) declines to exercise supplemental jurisdiction over plaintiffs' claim for overtime under the New York Labor Law and dismisses such claim, without prejudice; and (4) denies defendants' motion for summary judgment with regard to plaintiffs' remaining claims.

Counsel shall appear on July 2, 2008, at 9:00 a.m., for a meeting to set a trial date.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: June 17, 2008